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**From:** Vince Haley [REDACTED] on behalf of Vince Haley [REDACTED]  
**To:** [REDACTED] Dan Huff  
**Sent:** 05-Nov-20 9:50:54 PM  
**Subject:** State legislature plenary power under Constitution to slate electoral college electors

See information below on state legislative power to choose presidential electors, including treatment of Bush v Gore on this issue from 2000 post election fight.

In brief, it sure seems that state legislatures have the absolute power under the Constitution to slate presidential electors - and even to take back its power if they delegated it under state law. (Apparently Bush v Gore indicated that such exercise of plenary power would be qualified to ensure that such exercise of power complied with 14th amendment's equal protection provisions. I say that would be part of the argument for state legislature to step in - to protect the equal rights of all citizens to a fair vote.)

This would be the biggest Trump card of all: Republican state legislatures in PA, MI, WI, GA, NC potentially slating electors for Trump, notwithstanding a contrary a popular vote outcome certified by their Secretaries of State (and it may even lead to competing slates sent to Congress).

The simplest rationale for their action would be that it was clear that the shenanigans undertaken by the democrats had placed the TRUE outcome of the vote in question, and the legislature was stepping forward to provide an ACCOUNTABLE outcome.

This ultimate strategy is bolstered by our efforts to document misdeeds in the voting in those states. To raise substantial and credible doubt.

In my view it is incumbent on our side to:

1. Stop the counting now. We must get these counts stopped now until we can agree on the legitimacy of the ongoing count and way to conduct the count - eligibility of voters etc (and likely recounts). It is going to be very difficult politically to argue against a final result if it goes against us. Makes us look like we are taking back a result.
2. We need a mechanism to acquire ammunition for lawyers. A call in line or website to collect information on irregularities. We need facts for lawsuits. We need to make sure no documents (or ballots) are destroyed. We must focus on paper ballots. The Dems greatest fear will be counting paper ballots with rules everybody agrees on, especially to acquire a meaningful recount.

Ultimately the state legislature is the political body responsible / accountable for the integrity of the vote in their state. If a robust factual case can be made in these states that various shenanigans led to a disputed outcome on counting votes properly (eg universal mail in ballots started in middle of election year) that led to inconclusive outcomes we will never know, these legislators may be able to persuasively argue that in place of an unclear outcome, they are providing an ACCOUNTABLE outcome for the people of their states.

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## BACKGROUND ON STATE LEGISLATIVE POWER TO SLATE ELECTORS

### **In Florida during the 2000 Presidential election, the State Legislature asserted its authority to allocate Florida's electoral votes to George Bush. "**

Amid rising partisan tensions, the Republican majority in the Florida Legislature moved closer Monday toward an unprecedented effort to directly award the state's 25 electoral votes to George W. Bush.

In legal papers filed with the U.S. Supreme Court, the Legislature asserted broad authority to allocate Florida's electoral votes even if the state courts order further recounts of presidential ballots that could give the lead to Democrat Al Gore. Speaker of the House Tom Feeney and Senate President John McKay, both Republicans close to Gov. Jeb Bush, signaled Monday that a special legislative committee meeting for the first time today would examine the Legislature's authority to appoint its own slate of electors. 'If this controversy is . . . unresolved by Dec. 12, the Legislature has the authority and may have the responsibility to step in,' said McKay, who represents a Tampa, Fla., district." "Using even stronger language, Feeney--who served as Jeb Bush's running mate in his unsuccessful 1994 gubernatorial bid--insisted that the Florida Supreme Court had usurped the authority of the Legislature by permitting counties to conduct manual recounts through Sunday. He strongly hinted that the Legislature may move to name its own electors if the state courts don't quickly dismiss Gore's formal contest against Secretary of State Katherine Harris' certification of George W. Bush as the official winner in the state." ([Los Angeles Times](#) - 11/28/2000)

**The Supreme Court in *Bush v. Gore* affirmed the Florida State Legislature's "plenary" power to select the electors itself.** "The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college. U. S. Const., Art. II, § 1. This is the source for the statement in *McPherson v. Blacker*, 146 U. S. 1, 35 (1892), that the state legislature's power to select the manner for appointing electors is plenary; it may, if it so chooses, select the electors itself, which indeed was the manner used by state legislatures in several States for many years after the framing of our Constitution." "The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors. See *id.*, at 35 ('[T]here is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated')." ([Supreme Court](#))

**In July of 2020 in *Chiafalo v. Washington* the Supreme Court cited *McPherson v. Blacker* and reiterated this power calling it "the broadest power of determination."** "Article II, §1's appointments power gives the States far reaching authority over presidential electors, absent some other constitutional constraint. As noted earlier, each State may appoint electors 'in such Manner as the Legislature thereof may direct.' Art. II, §1, cl. 2; see *supra*, at 2. This Court has described that clause as 'conveying the broadest power of determination' over who becomes an elector. *McPherson v. Blacker*, 146 U. S. 1, 27 (1892).<sup>5</sup> And the power to appoint an elector (in any manner) includes power to condition his appointment—that is, to say what the elector must do for the appointment to take effect." ([Supreme Court](#))

**During the early days of the Republic, state legislatures routinely chose their own electors for President.** "In the country's early years, some legislatures did not trouble themselves to involve their citizens in choosing the president. When George Washington was first elected in 1788, the legislatures of Connecticut, Delaware, Georgia, New Jersey and South Carolina appointed electors directly without a popular vote. The New York state legislature did not even choose electors because lawmakers couldn't resolve the split between its two chambers, which were controlled by different parties. The first several presidential elections followed a mixed pattern, with some states using popular elections to direct the choice of electors, while others left that choice solely to their legislatures." ([US News & World Report](#))